

Chapter 7 is known as a straight bankruptcy, involves liquidating all assets that are not exempt. Exempt property may include work-related tools and basic household furnishings. Some property may be sold by a court-appointed official or turned over to creditors.

Chapter 7 bankruptcy refers to the chapter of the federal statutes (the Bankruptcy Code) that contains the bankruptcy law. Chapter 7 bankruptcy is sometimes called "straight" bankruptcy. This bankruptcy cancels most of your debts; in exchange, you might have to surrender some of your property.

The whole Chapter 7 bankruptcy process takes about four to six months, costs \$200 in filing and administrative fees, and commonly requires only one trip to the courthouse.

To file for bankruptcy, you fill out a two-page petition and several other forms. Then you file the petition and forms with the bankruptcy court in your area. Basically, the forms ask you to describe: your property

- ◆ your current income and its sources
- ◆ your current monthly living expenses
- ◆ your debts
- ◆ property you claim the law allows you to keep through the bankruptcy process (exempt property -- most states let you keep clothing, household furnishings, Social Security payments you haven't spent and other basic items)
- ◆ property you owned and money you spent during the previous two years, and
- ◆ property you sold or gave away during the previous two years.

Filing for bankruptcy puts into effect something called the "automatic stay." The automatic stay immediately stops your creditors from trying to collect what you owe them. So, at least temporarily, creditors cannot legally garnish your wages; empty your bank account; go after your car, house, or other property; or cut off your utility service or welfare benefits.

Until your bankruptcy case ends, your financial problems are in the hands of the bankruptcy court. It assumes legal control of the property you own (except your exempt property, which is yours to keep) and the debts you owe as of the date you file. Nothing can be sold or paid without the court's consent. You have control, with a few exceptions, of property and income you acquire after you file for bankruptcy.

The court exercises its control through a court-appointed person called a "bankruptcy trustee." The trustee is mostly interested in what you own and what property you claim as exempt. This is because the trustee's primary duty is to see that your creditors are paid as much as possible on what you owe them. And the more assets the trustee recovers for creditors, the more the trustee is paid.

The trustee goes through the papers you file and asks you questions at a short hearing, called the "creditors' meeting," which you must attend. This meeting is not likely to last more than five minutes. Creditors may attend, too, but rarely do.

After this meeting, the trustee collects the property that can be taken from you (your nonexempt property) to be sold to pay your creditors. You can surrender the property to the trustee, pay the trustee its fair market value or, if the trustee agrees, swap some exempt property of equal value for the nonexempt property. If the property isn't worth very much or would be cumbersome for the trustee to sell, the trustee can "abandon" the property--which means that you get to keep it. Very few people actually lose property in bankruptcy.

If you've pledged property as collateral for a loan, the loan is called a secured debt. The most common examples of collateral are houses and motor vehicles. In most cases, you'll either have to surrender the collateral to the creditor or make arrangements to pay for it during or after bankruptcy. If a creditor has recorded a lien against your property, that debt is also secured. You may be able to wipe out the lien in bankruptcy.

If, after you file for bankruptcy, you change your mind, you can ask the court to dismiss your case. As a general rule, a court will dismiss a Chapter 7 bankruptcy case as long as the dismissal won't harm the creditors. Usually, you can file again if you want to, although you may have to wait 180 days.

At the end of the bankruptcy process, most of your debts are wiped out (discharged) by the court. You no longer legally owe your creditors. You can't file for Chapter 7 bankruptcy again for another six years from the date of your filing.

You can file for Chapter 7 only once every six years. Both types of bankruptcy may get rid of unsecured debts and stop foreclosures, repossessions, garnishments, utility shut-offs, and debt collection activities.

Both also provide exemptions that allow you to keep certain assets, although exemption amounts vary among states. Personal bankruptcy usually does not erase child support, alimony, fines, taxes, and some student loan obligations. Also, unless you have an acceptable plan to catch up on your debt under Chapter 13, bankruptcy usually does not allow you to keep property when your creditor has an unpaid mortgage or lien on it.

When Chapter 7 May Not Help You

Filing for Chapter 7 bankruptcy is one way to solve debt problems -- but, it's not the only way. In several common situations, bankruptcy is either unwise or legally impossible.

1. You Previously Received a Bankruptcy Discharge. You cannot file for Chapter 7 bankruptcy if you obtained a discharge of your debts under Chapter 7 or Chapter 13 in a case begun within the past six years. If, however, you obtained a Chapter 13 discharge

in good faith after paying at least 70% of your unsecured debts, the six-year bar does not apply. The six-year period runs from the date you filed for the earlier bankruptcy, not the date you received your discharge.

Chapter 13 bankruptcy has no such restriction; you can file for it at any time. So if you are barred from filing Chapter 7, and you want to file for bankruptcy quickly (for instance, to stop creditors' collection efforts), Chapter 13 may be an option.

Also, you cannot file for Chapter 7 bankruptcy if a previous Chapter 7 or Chapter 13 case was dismissed within the past 180 days because:

- ◆ you violated a court order, or
- ◆ you requested the dismissal after a creditor asked for relief from the automatic stay.

2. A Friend or Relative Cosigned a Loan. A friend, relative, or anyone else who cosigns a loan or otherwise takes on a joint obligation with you can be held wholly responsible for the debt if you can't pay it. If you file for Chapter 7 bankruptcy, you will no longer be liable for the debt, but the cosigner will be left on the hook. If you don't want to subject a cosigner to this liability, explore paying off the debt over time.

3. You Could Pay Your Debts Over Three to Five Years. A bankruptcy judge who decides that you have enough income to repay some or all of your debts in a Chapter 13 case can dismiss your Chapter 7 bankruptcy on the ground that to grant you a discharge would be a "substantial abuse" of the bankruptcy laws. If your monthly income exceeds your monthly expenses, giving you disposable income that can be used to pay your debts, you're at risk of having your case dismissed unless you agree to convert it to a Chapter 13 bankruptcy. (For more information, see *Getting Thrown Out of Bankruptcy Court*.)

4. You Want to Prevent Seizure of Wages or Property. You may not need to file for bankruptcy to keep creditors from seizing all your property and wages.

Normally, a creditor's only legal means of collecting a debt is to sue you, win a court judgment and then try to collect the amount of the judgment out of your property and income. A lot of your property, however, including food, clothing, personal effects and furnishings, is probably protected by law (exempt) from being taken to pay the judgment. And, quite likely, your nonexempt property is not worth enough to tempt a creditor to go after it, as the costs of seizure and sale can be quite high.

Creditors usually first go after your wages and other income. Here too, however, laws protect you. Only 25% of your net wages can be taken to satisfy a court judgment (up to 50% for child support and alimony). And often, you can keep more than 75% of your wages if you can demonstrate that you need the extra amount to support yourself and your family. Income from a pension or other retirement

benefit is usually treated like wages. Creditors cannot touch public benefits such as welfare, unemployment insurance, disability insurance, or Social Security.

5. You Just Want to Stop Harassment by Creditors. If your only concern is that creditors are harassing you, bankruptcy is not necessarily the best way to stop the abuse. You can hang on to your bankruptcy option but still get creditors off your back by taking advantage of federal and state debt collection laws that protect you from abusive and harassing debt collector conduct. See Fair Debt Collection for more information.

6. You Defrauded Your Creditors. Bankruptcy is geared towards the honest debtor who got in too deep and needs the help of the bankruptcy court to get a fresh start. A bankruptcy court does not want to help someone who has played fast and loose with creditors or tries to do so with the bankruptcy court.

Certain activities are red flags to the courts and trustees. If you have engaged in any of them during the past year, do not file for bankruptcy until you consult a bankruptcy lawyer. These no-nos are:

- ◆ unloading assets to your friends or relatives to hide them from creditors or from the bankruptcy court
- ◆ incurring debts for non-necessities when you were clearly broke
- ◆ concealing property or money from your spouse during a divorce proceeding, and
- ◆ lying about your income or debts on a credit application.

In addition, if you've recently run up large debts for a vacation, hobby, or entertainment, filing for bankruptcy probably won't help you. Most luxury debts incurred just before filing are not dischargeable if the creditor objects. And running up unnecessary debts shortly before filing casts a suspicion of fraud over your entire bankruptcy case.

Last-minute debts presumed to be nondischargeable include:

- ◆ debts of \$1,075 or more to any one creditor for luxury goods or services made within 60 days before filing, and
- ◆ debts for cash advances in excess of \$1,075 obtained within 60 days of filing for bankruptcy.

To discharge luxury debts, you will have to prove that extraordinary circumstances required you to make the charges and that you really weren't trying to put one over on your creditors. It's an uphill job. Judges often assume that people who incur last minute charges for luxuries were on a final buying binge before going under and had no intention of paying.

7. You Attempt to Defraud the Bankruptcy Court. Just as a bankruptcy court won't tolerate a debtor who plays fast and loose with his creditors, the court will toss (and possibly jail) someone who defrauds the bankruptcy court. If you lie, hide or cheat, it will probably come back to haunt you to a far greater degree than your current debt crisis does.

Filing for bankruptcy is not considered a crime. But you must sign your bankruptcy papers under "penalty of perjury" swearing that everything in them is true. If you deliberately fail to disclose property, omit material information about your financial affairs or use a false Social Security number (to hide your identity as a prior filer), and the court discovers your action, your case will be dismissed and you may be prosecuted for fraud.

See our Brochure on Bankruptcy Facts and Chapter 13.

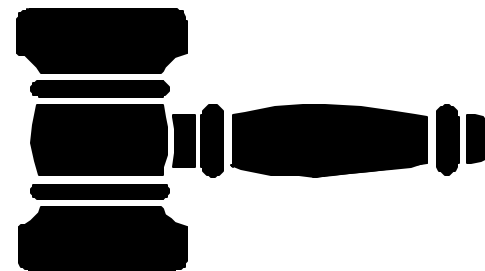
The Indiana Department of Financial Institutions, Division of Consumer Credit has many other credit related brochures available, such as:

Answers to Credit Problems
Applying for Credit
At Home Shopping Rights
Bankruptcy Facts
Buried in Debt
Car Financing Scams
Charge Card Fraud
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Co-Signing
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CHAPTER 7 BANKRUPTCY



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